

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

Title 76, Chapter 5, Part 2 drafted by Victoria

LONG TITLE

General Description:

This bill

Highlighted Provisions:

This bill:

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

List of sections affected:

AMENDS:

76-5-201

76-5-202

76-5-203

76-5-204

76-5-205

76-5-205.5

76-5-206

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31 76-5-207

32 76-5-207.5

33 76-5-208

34 76-5-209

35 REPEALS:

36 76-5-210

37 Statutory text:

38 **76-5-201. Criminal homicide -- ~~[Elements--]~~ Designations of offenses --**

39 **Exceptions.**

40 ~~[(1) (a) Except as provided in Subsections (3) and (4), a person commits criminal~~
41 ~~homicide if the person intentionally, knowingly, recklessly, with criminal negligence, or acting~~
42 ~~with a mental state otherwise specified in the statute defining the offense, causes the death~~
43 ~~of another human being, including an unborn child at any stage of its development.~~

44 ~~—— (b) There shall be no cause of action for criminal homicide for the death of an unborn~~
45 ~~child caused by an abortion, as defined in Section 76-7-301.~~

46 ~~—— (2) Criminal homicide is aggravated murder, murder, manslaughter, child abuse~~
47 ~~homicide, homicide by assault, negligent homicide, or automobile homicide.]~~

48 (1)(a) As used in this section, "abortion" has the same meaning as that term is
49 defined in Section 76-7-301.

50 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

51 (2) The following are criminal homicide:

52 (a) aggravated murder;

53 (b) murder;

54 (c) manslaughter;

55 (d) child abuse;

56 (e) homicide;

57 (f) homicide by assault;

58 (g) negligent homicide; and

59 (h) automobile homicide.

60 ~~[(3) A person]~~ (3) Notwithstanding Subsection (2), an actor is not guilty of criminal
61 homicide ~~[of an unborn child if]~~ if:

62 (a) the death of an unborn child is caused by an abortion;

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(b) the sole reason for the death of ~~[the]~~ an unborn child is that the ~~[person]~~ actor :

~~[(a)]~~ (i) refused to consent to:

~~[(f)]~~ (A) medical treatment; or

~~[(iii)]~~ (B) a cesarean section; or

~~[(b)]~~ (ii) failed to follow medical advice~~[-]~~ ; or

~~[(4) A woman is not guilty of criminal homicide of her own unborn child if the death of her unborn child]~~ (c) a woman causes the death of her own unborn child, and the death :

~~[(a)]~~ (i) is caused by a criminally negligent act or reckless act of the woman; and

~~[(b)]~~ (ii) is not caused by an intentional or knowing act of the woman.

76-5-202. Aggravated murder -- Penalties -- Affirmative defense and special mitigation -- Separate offense .

~~[(1) Criminal homicide constitutes aggravated murder if the actor intentionally or knowingly causes the death of another under any of the following circumstances:
—— (a) the homicide was committed by a person who is]~~

VA NOTE: I HAVE CHANGED THE XREF FOR SOME OF THESE DEFINITIONS, WHICH I BROUGHT TO THE BEGINNING INSTEAD OF EMBEDDED IN THE LANGUAGE, THAT ONLY REFERENCED A CHAPTER CONTAINING THE DEFINITION. WHERE A SPECIFIC TERM WAS USED, BUT NOT DEFINED IN A CHAPTER, I LEFT A GENERAL REFERENCE TO THE CHAPTER (E.G. SEE SECOND DEFINITION OF "PEACE OFFICER")

(1)(a) As used in this section:

(i) "Correctional officer" means the same that term is defined in Section 53-13-104.

(ii) "Emergency responder" means the same as that term is defined in Section 53-2b-102.

(iii) "Federal officer" means the same as that term is defined in Section 53-13-106.

(iv) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.

(v) "Peace officer" means:

(A) a correctional officer, a federal officer, a law enforcement officer, or special function officer; or

(B) any other individual who may exercise peace officer authority in accordance with Title 53, Chapter 13, Peace Officer Classifications.

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(vi) "Special function officer" means the same as that term is defined in Section 53-13-105.

(vii) "Target a law enforcement officer" means an act: VA NOTE: REPEALED 76-5-210 AND MOVED HERE

(A) involving the unlawful use of force and violence against a law enforcement officer;

(B) that causes serious bodily injury or death; and

(C) that is in furtherance of political or social objectives in order to intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government.

(viii) "Weapon of mass destruction" means the same as that term is defined in 76-10-401.

(b) Definitions of terms in Section 76-1-101.5 apply to this section.

VA NOTE: I HAVE REMOVED REFERENCES TO "VICTIM" AND REPLACED WITH "INDIVIDUAL" HOWEVER NOTE ISSUES WITH 3RD PARTIES

(2)(a) An actor commits aggravated murder if the actor intentionally or knowingly causes the death of an individual under any of the following circumstances:

(i) the actor committed homicide while confined in a jail or other correctional institution;

~~[(b) the homicide was committed]~~ (ii) (A) the actor committed homicide incident to one act, scheme, course of conduct, or criminal episode during which two or more ~~[persons]~~ individuals were killed~~[:]~~ ; or ~~[during which the actor attempted to kill one or more persons in addition to the victim who was killed;]~~

(B) the actor, during commission of the homicide, attempted to kill a third party in addition to the individual who was killed;

~~[(c)]~~ (iii) the actor knowingly created a great risk of death to a ~~[person]~~ third party other than the ~~[victim]~~ individual who was killed and the actor;

~~[(d)]~~ (iv) the actor committed homicide ~~[was committed]~~ incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted to commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child abuse as ~~[defined]~~ described in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;

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127 ~~[(e)]~~ (v) the actor committed homicide ~~[was committed]~~ incident to one act, scheme,
128 course of conduct, or criminal episode during which the actor committed the crime of abuse
129 or desecration of a dead human body as ~~[defined]~~ described in Subsection 76-9-704(2)(e);
130 ~~[(f)]~~ (vi) the actor committed homicide ~~[was committed]~~ for the purpose of avoiding
131 or preventing an arrest of the ~~[defendant]~~ actor or another individual by a peace officer
132 acting under color of legal authority or for the purpose of effecting the ~~[defendant's or~~
133 ~~another's]~~ actor's or another individual's escape from lawful custody;
134 ~~[(g)]~~ (vii) the actor committed homicide ~~[was committed]~~ for pecuniary gain;
135 ~~[(h)]~~ (viii) the ~~[defendant]~~ actor committed, ~~[or]~~ engaged . or employed another
136 ~~[person]~~ individual to commit the homicide ~~[pursuant to]~~ under an agreement or contract
137 for remuneration or the promise of remuneration for commission of the homicide;
138 ~~[(i)]~~ (ix) the actor previously committed or was convicted of:
139 ~~[(i)]~~ (A) aggravated murder under this section;
140 ~~[(ii)]~~ (B) attempted aggravated murder under this section;
141 ~~[(iii)]~~ (C) murder, under Section 76-5-203;
142 ~~[(iv)]~~ (D) attempted murder, under Section 76-5-203; or
143 ~~[(v)]~~ (E) an offense committed in another jurisdiction which if committed in this state
144 would be a violation of a crime listed in this Subsection ~~[(1)]~~ (2) (i);
145 ~~[(f)]~~ (x) the actor was previously convicted of:
146 ~~[(f)]~~ (A) aggravated assault, punishable as a second degree felony under
147 Subsection 76-5-103(2);
148 ~~[(ii)]~~ (B) mayhem, under Section 76-5-105;
149 ~~[(iii)]~~ (C) kidnapping, under Section 76-5-301;
150 ~~[(iv)]~~ (D) child kidnapping, under Section 76-5-301.1;
151 ~~[(v)]~~ (E) aggravated kidnapping, under Section 76-5-302;
152 ~~[(vi)]~~ (F) rape, under Section 76-5-402;
153 ~~[(vii)]~~ (G) rape of a child, under Section 76-5-402.1;
154 ~~[(viii)]~~ (H) object rape, under Section 76-5-402.2;
155 ~~[(ix)]~~ (I) object rape of a child, under Section 76-5-402.3;
156 ~~[(x)]~~ (J) forcible sodomy, under Section 76-5-403;
157 ~~[(xi)]~~ (K) sodomy on a child, under Section 76-5-403.1;
158 ~~[(xii)]~~ (L) aggravated sexual abuse of a child, under Section 76-5-404.1;

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159 ~~[(xiii)]~~ (M) aggravated sexual assault, under Section 76-5-405;

160 ~~[(xiv)]~~ (N) aggravated arson, under Section 76-6-103;

161 ~~[(xv)]~~ (O) aggravated burglary, under Section 76-6-203;

162 ~~[(xvi)]~~ (P) aggravated robbery, under Section 76-6-302;

163 ~~[(xvii)]~~ (Q) felony discharge of a firearm, under Section 76-10-508.1; or

164 ~~[(xviii)]~~ (F) an offense committed in another jurisdiction which if committed in this

165 state would be a violation of a crime listed in this Subsection ~~[(1)(j)]~~ (2)(a)(x);

166 ~~[(k)]~~ (xi) the actor committed homicide ~~[was committed]~~ for the purpose of:

167 ~~[(i)]~~ (A) preventing a witness from testifying;

168 ~~[(ii)]~~ (B) preventing a person from providing evidence or participating in any legal

169 proceedings or official investigation;

170 ~~[(iii)]~~ (C) retaliating against a person for testifying, providing evidence, or

171 participating in any legal proceedings or official investigation; or

172 ~~[(iv)]~~ (D) disrupting or hindering any lawful governmental function or enforcement of

173 laws;

174 ~~[(i)]~~ (xii) the ~~[victim]~~ individual who is killed is or has been a local, state, or federal

175 public official, or a candidate for public office, and the homicide is based on, is caused by, or

176 is related to that official position, act, capacity, or candidacy;

177 ~~[(m)]~~ (xiii) the ~~[victim]~~ individual who is killed is on duty in a verified position VA

178 NOTE: DEFINE? or the homicide is based on, is caused by, or is related to the ~~[victim's]~~

179 individual's who was killed position, and the actor knew, or reasonably should have known,

180 that the ~~[victim]~~ individual who was killed holds or has held the position of:

181 ~~[(i) a law enforcement officer, correctional officer, special function officer, or any other~~

182 ~~peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications]~~ (A) a peace

183 officer;

184 ~~[(ii)]~~ (B) an executive officer, prosecuting officer, jailer, or prison official;

185 ~~[(iii)]~~ (C) a firefighter, search and rescue personnel, emergency medical personnel,

186 ambulance personnel, or any other emergency responder ~~[as defined in Section 53-2b-102]~~;

187 ~~[(iv)]~~ (D) a judge or other court official, juror, probation officer, or parole officer; or

188 ~~[(v)]~~ (E) a security officer contracted to secure, guard, or otherwise protect tangible

189 personal property, real property, or the life and well-being of human or animal life in the area

190 of the offense;

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191 ~~[(n)]~~ (xiv) the actor committed homicide ~~[was committed]~~:

192 ~~[(i)]~~ (A) by means of a destructive device, bomb, explosive, incendiary device, or
193 similar device which was planted, hidden, or concealed in any place, area, dwelling, building,
194 or structure, or was mailed or delivered;

195 ~~[(ii)]~~ (B) by means of any weapon of mass destruction ~~[as defined in Section~~
196 ~~76-10-404]~~; or

197 ~~[(iii)]~~ (C) to target a law enforcement officer ~~[as defined in Section 76-5-210]~~;

198 ~~[(o)]~~ (xv) the actor committed homicide ~~[was committed]~~ during the act of unlawfully
199 assuming control of ~~[any]~~ an aircraft, train, or other public conveyance by use of threats or
200 force with intent to :

201 (A) obtain any valuable consideration for the release of the public conveyance or any
202 passenger, crew member, or any other ~~[person]~~ individual aboard ~~[, or to]~~ :

203 (B) direct the route or movement of the public conveyance : or

204 (C) otherwise exert control over the public conveyance;

205 ~~[(p)]~~ (xvi) the actor committed homicide ~~[was committed]~~ by means of the
206 administration of a poison or of any lethal substance or of any substance administered in a
207 lethal amount, dosage, or quantity;

208 ~~[(q)]~~ (xvii) the ~~[victim]~~ individual who was killed was ~~[a person]~~ an individual held or
209 otherwise detained as a shield, hostage, or for ransom;

210 ~~[(r)]~~ (xviii) the actor committed homicide ~~[was committed]~~ in an especially heinous,
211 atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by
212 physical torture, serious physical abuse, or serious bodily injury of the ~~[victim]~~ individual who
213 was killed before death;

214 ~~[(s)]~~ (xix) the actor dismembers, mutilates, or disfigures the ~~[victim's]~~ individual's
215 who was killed body, whether before or after death, in a manner demonstrating the actor's
216 depravity of mind; or

217 ~~[(t)]~~ (xx) the ~~[victim]~~ individual who was killed, at the time of the death of the ~~[victim]~~
218 individual :

219 ~~[(i)]~~ (A) was younger than 14 years ~~[of age]~~ old ; and

220 ~~[(ii)]~~ (B) was not an unborn child.

221 ~~[(2) Criminal homicide constitutes aggravated murder if the]~~ (3) An actor commits
222 aggravated murder if the actor, with reckless indifference to human life, causes the death of

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223 ~~[another]~~ an individual incident to an act, scheme, course of conduct, or criminal episode
224 during which the actor is a major participant in the commission or attempted commission of:

- 225 (a) child abuse, punishable as a felony of the second degree under Subsection
226 76-5-109(2)(a);
- 227 (b) child kidnapping, under Section 76-5-301.1;
- 228 (c) rape of a child, under Section 76-5-402.1;
- 229 (d) object rape of a child, under Section 76-5-402.3;
- 230 (e) sodomy on a child, under Section 76-5-403.1; or
- 231 (f) sexual abuse or aggravated sexual abuse of a child, under Section 76-5-404.1.

232 (3) (a) If a notice of intent to seek the death penalty has been filed, ~~[aggravated~~
233 ~~murder]~~ a violation of Subsection (2) is a capital felony.

234 (b) If a notice of intent to seek the death penalty has not been filed, aggravated
235 murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

236 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file
237 notice of intent to seek the death penalty.

238 (ii) The notice shall be served on the defendant or defense counsel and filed with the
239 court.

240 ~~[(ii)]~~ (iii) Notice of intent to seek the death penalty may be served and filed more than
241 60 days after the arraignment upon written stipulation of the parties or upon a finding by the
242 court of good cause.

243 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to
244 noncapital first degree felony aggravated murder during the period in which the prosecutor
245 may file a notice of intent to seek the death penalty under Subsection (3) (c)(i).

246 (e) If the defendant was younger than 18 years ~~[of age]~~ old at the time the offense
247 was committed, aggravated murder is a noncapital first degree felony punishable as provided
248 in Section 76-3-207.7.

249 VA NOTE: THE FOLLOWING IS AN ATTEMPT TO CLARIFY SPECIAL MITIGATION

250 (f)(i) If the trier of fact finds the elements of aggravated murder, or alternatively,
251 attempted aggravated murder, as described in this section are proved beyond a reasonable
252 doubt, and also finds that the existence of special mitigation is established by a
253 preponderance of the evidence and in accordance with Section 76-5-205.5, the actor:

254 (A) is guilty of a first degree felony; and

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255 (B) shall be sentenced in accordance with the sentencing provisions of Subsection
256 76-5-203(3)(b).

257 (ii) If the trier of fact finds that special mitigation is not established in accordance with
258 Section 76-5-205.5, the trier of fact shall convict the defendant of aggravated murder or
259 attempted aggravated murder, respectively.

260 (4) (a) It is an affirmative defense to a charge of aggravated murder or attempted
261 aggravated murder that the ~~[defendant]~~ actor caused the death of another or attempted to
262 cause the death of another under a reasonable belief that the circumstances provided a legal
263 justification or excuse for the conduct although the conduct was not legally justifiable or
264 excusable under the existing circumstances.

265 (b) The reasonable belief of the actor under Subsection (4) (a) shall be determined
266 from the viewpoint of a reasonable person under the then existing circumstances.

267 (c) ~~[This]~~ The affirmative defense described in this Subsection (4) reduces charges
268 only as follows:

269 (i) aggravated murder to murder; and

270 (ii) attempted aggravated murder to attempted murder.

271 (5) (a) Any aggravating circumstance described in Subsection ~~[(1)-or]~~ (2) that
272 constitutes a separate offense does not merge with the crime of aggravated murder.

273 (b) ~~[A person]~~ An actor who is convicted of aggravated murder, based on an
274 aggravating circumstance described in Subsection ~~[(1)-or]~~ (2) that constitutes a separate
275 offense, may also be convicted of, and punished for, the separate offense.

276 **76-5-203. Murder -- Penalties-- Affirmative defense and special mitigation --**
277 **Separate offenses .**

278 (1) (a) As used in this section, "predicate offense" means:

279 ~~[(a)]~~ (i) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;

280 ~~[(b)]~~ (ii) child abuse, under Subsection 76-5-109(2)(a), when the ~~[victim]~~ abused
281 individual is younger than 18 years of age;

282 ~~[(c)]~~ (iii) kidnapping under Section 76-5-301;

283 ~~[(d)]~~ (iv) child kidnapping under Section 76-5-301.1;

284 ~~[(e)]~~ (v) aggravated kidnapping under Section 76-5-302;

285 ~~[(f)]~~ (vi) rape of a child under Section 76-5-402.1;

286 ~~[(g)]~~ (vii) object rape of a child under Section 76-5-402.3;

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- 287 ~~[(h)]~~ (viii) sodomy upon a child under Section 76-5-403.1;
- 288 ~~[(i)]~~ (ix) forcible sexual abuse under Section 76-5-404;
- 289 ~~[(f)]~~ (x) sexual abuse of a child or aggravated sexual abuse of a child under Section
290 76-5-404.1;
- 291 ~~[(k)]~~ (xi) rape under Section 76-5-402;
- 292 ~~[(f)]~~ (xii) object rape under Section 76-5-402.2;
- 293 ~~[(m)]~~ (xiii) forcible sodomy under Section 76-5-403;
- 294 ~~[(n)]~~ (xiv) aggravated sexual assault under Section 76-5-405;
- 295 ~~[(o)]~~ (xv) arson under Section 76-6-102;
- 296 ~~[(p)]~~ (xvi) aggravated arson under Section 76-6-103;
- 297 ~~[(q)]~~ (xvii) burglary under Section 76-6-202;
- 298 ~~[(r)]~~ (xviii) aggravated burglary under Section 76-6-203;
- 299 ~~[(s)]~~ (xix) robbery under Section 76-6-301;
- 300 ~~[(t)]~~ (xx) aggravated robbery under Section 76-6-302;
- 301 ~~[(u)]~~ (xxi) escape or aggravated escape under Section 76-8-309; or
- 302 ~~[(v)]~~ (xxii) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge
303 of a firearm or dangerous weapon.
- 304 (b) Definitions of terms in Section 76-1-101.5 apply to this section.
- 305 (2) ~~[Criminal homicide constitutes]~~ An actor commits murder if:
- 306 (a) the actor intentionally or knowingly causes the death of another;
- 307 (b) intending to cause serious bodily injury to another, the actor commits an act
308 clearly dangerous to human life that causes the death of another;
- 309 (c) acting under circumstances evidencing a depraved indifference to human life, the
310 actor knowingly engages in conduct ~~[which]~~ that creates a grave risk of death to another
311 and thereby causes the death of another;
- 312 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
313 flight from the commission or attempted commission of any predicate offense, or is a party to
314 the predicate offense;
- 315 (ii) ~~[a person]~~ an individual other than a party ~~[as defined]~~ described in Section
316 76-2-202 is killed in the course of the commission, attempted commission, or immediate flight
317 from the commission or attempted commission of any predicate offense; and
- 318 (iii) the actor acted with the intent required as an element of the predicate offense;

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319 (e) the actor recklessly causes the death of a peace officer or military service member
320 in uniform while in the commission or attempted commission of:

321 (i) an assault against a peace officer under Section 76-5-102.4;

322 (ii) interference with a peace officer while making a lawful arrest under Section
323 76-8-305 if the actor uses force against ~~[a]~~ the peace officer; or

324 (iii) an assault against a military service member in uniform under Section 76-5-102.4;

325 (f) the actor commits a homicide ~~[which]~~ that would be aggravated murder, but the
326 offense is reduced ~~[pursuant to]~~ in accordance with Subsection 76-5-202(4) ; or

327 (g) the actor commits aggravated murder, but special mitigation is established under
328 Section 76-5-205.5.

329 (3) (a) ~~[Murder]~~ A violation of Subsection (2) is a first degree felony.

330 (b) ~~[A person]~~ A defendant who is convicted of murder shall be sentenced to
331 imprisonment for an indeterminate term of not less than 15 years and which may be for life.

332 (4) (a) It is an affirmative defense to a charge of murder or attempted murder that the
333 defendant caused the death of another or attempted to cause the death of another under a
334 reasonable belief that the circumstances provided a legal justification or excuse for the
335 conduct although the conduct was not legally justifiable or excusable under the existing
336 circumstances.

337 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined
338 from the viewpoint of a reasonable ~~[person]~~ individual under the then existing
339 circumstances.

340 (c) ~~[This]~~ The affirmative defense described in this Subsection (4) reduces charges
341 only from:

342 (i) murder to manslaughter; and

343 (ii) attempted murder to attempted manslaughter.

344 VA NOTE: THE FOLLOWING IS AN ATTEMPT TO CLARIFY SPECIAL MITIGATION

345 (d)(i) If the trier of fact finds the elements of murder, or alternatively, attempted
346 murder, as described in this section are proved beyond a reasonable doubt, and also finds
347 that the existence of special mitigation is established by a preponderance of the evidence
348 and in accordance with Section 76-5-205.5, the actor is guilty of a felony of the second
349 degree.

350 (ii) If the trier of fact finds that special mitigation is not established in accordance with

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351 Section 76-5-205.5, the trier of fact shall convict the defendant of murder or attempted
352 murder, respectively.

353 (5) (a) Any predicate offense ~~[described in Subsection (1)]~~ that constitutes a separate
354 offense does not merge with the crime of murder.

355 (b) ~~[A person]~~ An actor who is convicted of murder, based on a predicate offense
356 ~~[described in Subsection (1)]~~ that constitutes a separate offense, may also be convicted of,
357 and punished for, the separate offense.

358 **76-5-204. Death of individual other than intended victim no defense.**

359 (1) Definitions of terms in Section 76-1-101.5 apply to this section.

360 (2) In ~~[any]~~ a prosecution for criminal homicide, evidence that the actor caused the
361 death of ~~[a person]~~ an individual other than the ~~[intended victim shall not constitute]~~
362 individual the actor intended to cause the death of is not a defense for any purpose to
363 criminal homicide. VA NOTE: CHANGE TO INDIVIDUAL FROM VICTIM BUT IT'S NOT AS
364 EASY TO READ

365 **76-5-205. Manslaughter -- Penalties.**

366 (1) (a) As used in this section:

367 ~~[(a)]~~ (i) (A) "Aid" means the act of providing the physical means.

368 ~~[(ii)]~~ (B) "Aid" does not include the withholding or withdrawal of life sustaining
369 treatment procedures to the extent allowed under Title 75, Chapter 2a, Advance Health Care
370 Directive Act, or any other laws of this state.

371 ~~[(b)]~~ (ii) "Practitioner" means an individual currently licensed, registered, or otherwise
372 authorized by law to administer, dispense, distribute, or prescribe medications or procedures
373 in the course of professional practice.

374 ~~[(c)]~~ (iii) "Provides" means to administer, prescribe, distribute, or dispense.

375 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

376 (2) Except as provided in Subsection (5), ~~[criminal homicide constitutes manslaughter~~
377 ~~if the actor]~~ an actor commits manslaughter if the actor :

378 (a) recklessly causes the death of another;

379 (b) intentionally, and with knowledge that another individual intends to commit suicide
380 or attempt to commit suicide, aids the other individual to commit suicide; or

381 (c) commits a homicide which would be murder, but the offense is reduced ~~[pursuant~~
382 ~~to]~~ in accordance with Subsection 76-5-203(4) ~~[; or~~

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~~(d) commits murder, but special mitigation is established under Section 76-5-205.5].~~

(3) ~~[Manslaughter]~~ A violation of Subsection (2) is a felony of the second degree.

(4) (a) In addition to the penalty described under this section or any other section, ~~[an individual]~~ a defendant who is convicted of violating this section shall have the ~~[individual's]~~ defendant's driver license revoked under Section 53-3-220 if the death of another individual results from driving a motor vehicle.

(b) The court shall forward the report of the conviction resulting from driving a motor vehicle to the Driver License Division in accordance with Section 53-3-218.

(5) (a) A practitioner does not violate Subsection (2)(b) if the practitioner provides medication or a procedure to treat an individual's illness or relieve an individual's pain or discomfort, regardless of whether the medication or procedure may hasten or increase the risk of death to the individual to whom the practitioner provides the medication or procedure~~;~~ unless] _.

(b) Notwithstanding Subsection (5)(a), a practitioner violates Subsection (2)(b) if the practitioner intentionally and knowingly provides the medication or procedure to aid the individual to commit suicide or attempt to commit suicide.

76-5-205.5. Special mitigation for mental illness or provocation reducing ~~[the level of criminal homicide offense]~~ offense sentence -- Burden of proof -- Application to reduce offense.

(1) (a) As used in this section:

~~[(a)]~~ (i) (A) "Extreme emotional distress" means an overwhelming reaction of anger, shock, or grief that:

~~[(A)]~~ (I) causes the defendant to be incapable of reflection and restraint; and

~~[(B)]~~ (II) would cause an objectively reasonable person to be incapable of reflection and restraint.

~~[(ii)]~~ (B) "Extreme emotional distress" does not include:

~~[(A)]~~ (I) a condition resulting from mental illness; or

~~[(B)]~~ (II) distress that is substantially caused by the defendant's own conduct.

~~[(b)]~~ (ii) "Mental illness" means the same as that term is defined in Section 76-2-305.

(b) Definitions of terms in Section 76-1-101.5 apply to this section.

(2) Special mitigation exists when a defendant causes the death of another or attempts to cause the death of another:

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415 (a) (i) under circumstances that are not legally justified, but the defendant acts under
416 a delusion attributable to a mental illness;

417 (ii) the nature of the delusion is such that, if the facts existed as the defendant
418 believed them to be in the delusional state, those facts would provide a legal justification for
419 the defendant's conduct; and

420 (iii) the defendant's actions, in light of the delusion, are reasonable from the objective
421 viewpoint of a reasonable person; or

422 (b) except as provided in Subsection (4), under the influence of extreme emotional
423 distress that is predominantly caused by the [victim's] deceased individual's highly
424 provoking act immediately preceding the defendant's actions. VA NOTE: DOES THIS WORK
425 IN LIEU OF "VICTIM" OR DOES IT NEED TO BE MORE SPECIFIC HOW THE INDIVIDUAL
426 IS DECEASED?

427 (3) A defendant who is under the influence of voluntarily consumed, injected, or
428 ingested alcohol, controlled substances, or volatile substances at the time of the alleged
429 offense may not claim mitigation of the offense under Subsection (2)(a) on the basis of
430 mental illness if the alcohol or substance causes, triggers, or substantially contributes to the
431 defendant's mental illness.

432 (4) A defendant may not claim special mitigation under Subsection (2)(b) if:

433 (a) the time period after the [victim's] deceased individual's highly provoking act and
434 before the defendant's actions was long enough for an objectively reasonable person to have
435 recovered from the extreme emotional distress;

436 (b) the defendant responded to the [victim's] deceased individual's highly provoking
437 act by inflicting serious or substantial bodily injury on the [victim] deceased individual over a
438 prolonged period, or by inflicting torture on the [victim] deceased individual, regardless of
439 whether the [victim] deceased individual was conscious during the infliction of serious or
440 substantial bodily injury or torture; or

441 (c) the [victim's] deceased individual's highly provoking act, described in Subsection
442 (2)(b), is comprised of words alone.

443 VA NOTE: FOLLOWING LANGUAGE WAS MOVED TO EACH OF THE OFFENSE
444 STATUTES

445 ~~[(5) (a) If the trier of fact finds that the elements of an offense described in Subsection~~
446 ~~(5)(b) are proven beyond a reasonable doubt, and also finds that the existence of special~~

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mitigation under this section is established by a preponderance of the evidence, the trier of fact shall return a verdict on the reduced charge as provided in Subsection (5)(b):

—— (b) If under Subsection (5)(a) the offense is:

—— (i) aggravated murder, the defendant shall instead be found guilty of murder;

—— (ii) attempted aggravated murder, the defendant shall instead be found guilty of attempted murder;

—— (iii) murder, the defendant shall instead be found guilty of manslaughter; or

—— (iv) attempted murder, the defendant shall instead be found guilty of attempted manslaughter.

—— (c) If the trier of fact finds that special mitigation is not established under this section, the trier of fact shall convict the defendant of the offense for which the prosecution proves all the elements beyond a reasonable doubt.]

[~~(6)~~] (5) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to establish the existence of the special mitigation under this section.

(b) If the jury finds special mitigation by a unanimous vote, the jury shall return a verdict on the reduced charge ~~[as provided in Subsection (5)]~~ in accordance with the criminal homicide statute under which the defendant is charge.

(c) If the jury finds by a unanimous vote that special mitigation is not established, or if the jury is unable to unanimously agree special mitigation is established, the jury shall convict the defendant of the greater offense for which the prosecution proves all the elements beyond a reasonable doubt.

[~~(7)~~] (6) (a) If the issue of special mitigation is submitted to the trier of fact, the trier of fact shall return a special verdict indicating whether the existence of special mitigation is found.

(b) The trier of fact shall return the special verdict at the same time as the general verdict, to indicate the basis for the general verdict.

~~[(8) Special mitigation under this section does not, in any case, reduce the level of an offense by more than one degree from that offense, the elements of which the evidence proves beyond a reasonable doubt.]~~ VA NOTE: WITH THE SPECIAL MITIGATION

CHANGES MADE WITHIN THE RESPECTIVE OFFENSE STATUTES, DELETED. OK?

76-5-206. Negligent homicide -- Penalties .

(1) Definitions of terms in Section 76-1-101.5 apply to this section.

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479 ~~[(1) Criminal homicide constitutes negligent homicide]~~ (2) An actor commits negligent
480 homicide if the actor, acting with criminal negligence, causes the death of another.

481 ~~[(2) Negligent homicide]~~ A violation of Subsection (2) is a class A misdemeanor.

482 ~~[(3)]~~ (4) (a) In addition to the penalty provided under this section or any other
483 section, ~~[a person]~~ an individual who is convicted of violating this section shall have the
484 ~~[person's]~~ individual's driver license revoked under Section 53-3-220 if the death of another
485 ~~[person]~~ individual results from driving a motor vehicle.

486 (b) The court shall forward the report of the conviction to the Driver License Division
487 in accordance with Section 53-3-218.

488 **76-5-207. Automobile homicide -- Penalties -- Evidence .**

489 (1) (a) As used in this section:

490 (i) "Criminally negligent" means the same as that term is described in Subsection
491 76-2-103(4).

492 ~~[(a)]~~ (ii) "Drug" or "drugs" means:

493 ~~[(i)]~~ (A) a controlled substance as defined in Section 58-37-2;

494 ~~[(ii)]~~ (B) a drug as defined in Section 58-17b-102; or

495 ~~[(iii)]~~ (C) any substance that, when knowingly, intentionally, or recklessly taken into
496 the human body, can impair the ability of ~~[a person]~~ an individual to safely operate a motor
497 vehicle.

498 ~~[(b)]~~ (iii) "Motor vehicle" means any self-propelled vehicle and includes any
499 automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

500 (iv) "Negligent" means simple negligence, the failure to exercise that degree of care
501 that reasonable and prudent persons exercise under like or similar circumstances.

502 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

503 (2) ~~[(a) Criminal homicide is automobile homicide, a third degree felony, if the person]~~
504 An actor commits automobile homicide if the actor:

505 (a) operates a motor vehicle in a negligent or criminally negligent manner causing
506 the death of another ; and~~[:]~~

507 ~~[(i)]~~ (b)(i) has sufficient alcohol in ~~[his]~~ the actor's body that a subsequent chemical
508 test shows that the ~~[person]~~ actor has a blood or breath alcohol concentration of .05 grams
509 or greater at the time of the test;

510 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol

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511 and any drug to a degree that renders the [person] actor incapable of safely operating a
512 vehicle; or

513 (iii) has a blood or breath alcohol concentration of .05 grams or greater at the time of
514 operation.

515 ~~[(b) A conviction for a violation of this Subsection (2) is a second degree felony if it is~~
516 ~~subsequent to a conviction as defined in Subsection 41-6a-501(2).]~~

517 ~~[(c) As used in this Subsection (2), "negligent" means simple negligence, the failure to~~
518 ~~exercise that degree of care that reasonable and prudent persons exercise under like or~~
519 ~~similar circumstances.]~~

520 ~~[— (3) (a) Criminal homicide is automobile homicide, a second degree felony, if the~~
521 ~~person operates a motor vehicle in a criminally negligent manner causing the death of~~
522 ~~another and:~~

523 ~~— (i) has sufficient alcohol in his body that a subsequent chemical test shows that the~~
524 ~~person has a blood or breath alcohol concentration of .05 grams or greater at the time of the~~
525 ~~test;~~

526 ~~— (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol~~
527 ~~and any drug to a degree that renders the person incapable of safely operating a vehicle; or~~

528 ~~— (iii) has a blood or breath alcohol concentration of .05 grams or greater at the time of~~
529 ~~operation.~~

530 ~~— (b) As used in this Subsection (3), "criminally negligent" means criminal negligence as~~
531 ~~defined by Subsection 76-2-103(4).]~~

532 VA NOTE: PLEASE REVIEW FOLLOWING REWRITE

533 (3)(a) A violation of Subsection (2) is a third degree felony if the actor operated a
534 motor vehicle in a negligent manner.

535 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a second degree
536 felony if the actor operated the motor vehicle in a criminally negligent manner.

537 (c) Notwithstanding Subsection (3)(a) or (b), a violation of Subsection (2) is a second
538 degree felony if:

539 (i) the actor operated a motor vehicle in a negligent manner; and

540 (ii) conviction for the violation is subsequent to a conviction as defined in Subsection
541 41-6a-501(2)(a).

542 (4) The fact that an actor charged with violating this section is or has been legally

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543 entitled to use alcohol or a drug is not a defense.

544 (5) An actor is guilty of a separate offense for each individual suffering bodily injury or
545 serious bodily injury, whether or not the injuries arise from the same episode of driving, as a
546 result of the actor's violation of Section 41-6a-502 or death as a result of the actor's violation
547 of this section.

548 ~~[(4)]~~ (6)(a) The standards for chemical breath analysis as provided by Section
549 41-6a-515 and the provisions for the admissibility of chemical test results as provided by
550 Section 41-6a-516 apply to determination and proof of blood alcohol content under this
551 section.

552 ~~[(5)]~~ (b) Calculations of blood or breath alcohol concentration under this section shall
553 be made in accordance with Subsection 41-6a-502(1).

554 ~~[(6) The fact that a person charged with violating this section is or has been legally~~
555 ~~entitled to use alcohol or a drug is not a defense.]~~

556 ~~[(7)]~~ (c) Evidence of a defendant's blood or breath alcohol content or drug content is
557 admissible except when prohibited by Rules of Evidence or the constitution.

558 ~~[(8) A person is guilty of a separate offense for each victim suffering bodily injury or~~
559 ~~serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a~~
560 ~~result of the person's violation of this section whether or not the injuries arise from the same~~
561 ~~episode of driving.]~~

562 **76-5-207.5. Automobile homicide involving using a handheld wireless**
563 **communication device while driving.**

564 (1) (a) As used in this section:

565 ~~[(a)]~~ (i) "Criminally negligent" means ~~[criminally negligence as defined by]~~ means the
566 same as that term is described in Subsection 76-2-103(4).

567 ~~[(b)]~~ (ii) "Handheld wireless communication device" ~~[has the same meaning as]~~
568 means the same as that term is defined in Section 41-6a-1716.

569 ~~[(c)]~~ (iii) "Motor vehicle" means any self-propelled vehicle and includes any
570 automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

571 ~~[(d)]~~ (iv) "Negligent" means simple negligence, the failure to exercise that degree of
572 care that reasonable and prudent persons exercise under like or similar circumstances.

573 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

574 ~~[(2) Criminal homicide is automobile homicide, a third degree felony, if the person]~~

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575 (2) An actor commits automobile homicide if the actor:
576 (a)(i) operates a moving motor vehicle :
577 (A) in a negligent manner[;] ; or
578 (B) in a criminally negligent manner; and
579 [(a)] (ii) while using a handheld wireless communication device in violation of Section
580 41-6a-1716; and
581 [(b-causing)] (b) causes the death of another [person] individual .
582 ~~[(3) Criminal homicide is automobile homicide, a second degree felony, if the person~~
583 ~~operates a moving motor vehicle in a criminally negligent manner:~~
584 ~~—— (a) while using a handheld wireless communication device in violation of Section~~
585 ~~41-6a-1716; and~~
586 ~~—— (b) causing the death of another person.]~~
587 (3) A violation of Subsection (2)(a)(i)(A) is a third degree felony.
588 (b) A violation of Subsection (2)(a)(i)(B) is a second degree felony.
589 **76-5-208. Child abuse homicide -- Penalties .**
590 ~~[(1) Criminal homicide constitutes child abuse homicide if, under circumstances not~~
591 ~~amounting to aggravated murder, as described in Section 76-5-202,]~~
592 (1)(a) As used in this section, "child abuse" means an offense described in Subsection
593 76-5-109(1).
594 (b) Definitions of terms in Section 76-1-101.5 apply to this section.
595 (2) Unless a violation amounts to aggravated murder as described in Section
596 76-5-202, an actor commits child abuse homicide if:
597 (a)(i) the actor causes the death of a [person under] an individual younger than 18
598 years[of age] old; and
599 (ii) the individual's death results from child abuse[, as defined in Subsection
600 76-5-109(1):] ; and
601 [(a) if] (b)(i) the child abuse is done recklessly under Subsection 76-5-109(2)(b);
602 [(b) if] (ii) the child abuse is done with criminal negligence under Subsection
603 76-5-109(2)(c); or
604 [(c) if,] (iii) under circumstances not amounting to the type of child abuse homicide
605 described in Subsection [(1)(a)] (2)(b)(i), the child abuse is done intentionally, knowingly,
606 recklessly, or with criminal negligence, under Subsection 76-5-109(3)(a), (b), or (c).

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607 ~~[(2) Child abuse homicide as described in]~~ (3)(a) A violation of Subsection ~~[(1)(a)]~~
608 (2)(b)(i) is a first degree felony.

609 ~~[(3) Child abuse homicide as described in Subsections (1)(b) and (c)]~~ (b) A violation
610 of Subsection (2)(b)(ii) or (iii) is a second degree felony.

611 **76-5-209. Homicide by assault -- Penalty.**

612 (1) Definitions of terms in Section 76-1-101.5 apply to this section.

613 ~~[(1) A person]~~ (2) An actor commits homicide by assault if, under circumstances not
614 amounting to aggravated murder, murder, or manslaughter ~~[, a person]~~ :

615 (a) the actor causes the death of ~~[another]~~ an individual; and
616 (b) the actor causes the individual's death while intentionally or knowingly attempting,
617 with unlawful force or violence, to do bodily injury to ~~[another]~~ a third party .

618 ~~[(2)]~~ (3) Homicide by assault is a third degree felony.